

UNITED STATES OF AMERICA) DOCKET NO. 3:08-CR-210
)
)
 vs.)
)
 ANTHONY MINCEY)
 _____)

Case 3:08-cr-00210-RJC Document 57 Filed 11/06/09 Page 1 of 46

I N D E X

GOVERNMENT'S WITNESSES:

MARK HEATH

Direct Examination by Mr. Gleason 13, 23

Cross-Examination by Mr. Gsell 20

* * * * *

E X H I B I T S

GOVERNMENT'S EXHIBITS:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>RECEIVED</u>
1	Loss listing Wachovia	16	17
2	Loss listing individuals	17	19

* * * * *

Laura Andersen, RMR 704-350-7493

1 P R O C E E D I N G S

2 THE COURT: We're here in the matter of United
3 States V Anthony Mincey, for purposes of sentencing.

4 Mr. Mincey plead guilty before a magistrate judge
5 on January 30th of this year. The magistrate judge asked
6 some questions under oath, and found that his plea was
7 knowingly and voluntarily made. There were no objections
8 filed to the findings of the magistrate judge, and this
9 court will adopt them as its own.

10 Mr. Gleason, is there a factual basis to support
11 the entry of a plea of guilty in this case?

12 MR. GLEASON: Your Honor, the parties have
13 stipulated in the Plea Agreement that there is a factual
14 basis for the guilty plea. And that the court can use the
15 conduct as set out in the Presentencing Report with the
16 exception of any objections.

17 THE COURT: Thank you.

18 You so stipulate, Mr. Gsell?

19 MR. GSELL: So stipulated, Your Honor.

20 THE COURT: Based upon that stipulation, and the
21 offense conduct as set forth in the Presentence Report, as
22 well as Mr. Mincey's plea of guilty before the magistrate
23 judge, the court finds that there is a factual basis for the
24 entry of the pleas of guilty in this case.

25 Mr. Mincey, your case was referred to the Federal

Laura Andersen, RMR 704-350-7493

1 Probation Department for the purpose of preparing a
2 Presentence Report, which the Court has received and
3 reviewed. Have you had a chance to read the Presentence
4 Report?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you believe you understand it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had enough time to go over
9 the Presentence Report with your attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You may sit down at this time.

12 THE DEFENDANT: (Complies.)

13 THE COURT: And Mr. Gsell, I will be glad to hear
14 from you on objections to the Presentence Report.

15 MR. GSELL: Thank you, Your Honor.

16 I filed a number of objections. But there's
17 basically two areas that the objections deal with. One
18 deals with the dollar loss.

19 And the basis of that objection is that the
20 defendant and defense counsel don't have access to the
21 documents that the Federal Probation Office sends out to the
22 victims asking for their loss calculations.

23 My understanding is that those documents are sent
24 out by the probation office. The victims either do or do
25 not send them in. If they're sent in, probation reviews

Laura Andersen, RMR 704-350-7493

1 those numbers, and inserts those numbers into the loss
2 calculations.

3 The objection for Mr. Mincey is that I don't know
4 whether or not the numbers contained in the Presentence
5 Report -- because we don't have access to the documents, and
6 we don't know definitively how those numbers are calculated,
7 I cannot determine if those amounts contain any dollar
8 amounts that are prohibited under the Guidelines.

9 I don't know whether or not there's fees in there
10 that are inappropriate. I don't know if there's claimed
11 losses that are inappropriate under the Guidelines. And
12 that essentially is the basis.

13 We do not have access to those records. We're in
14 essence having to rely upon the number in the Presentence
15 Report, without having an opportunity to review it and/or
16 challenge it in any meaningful way.

17 THE COURT: There would have to be fees in the
18 amount of over 30,000 -- there would have to be -- in terms
19 of the loss amount reported by the various victims in
20 paragraph 26 of the Presentence Report, for your argument to
21 make a difference in terms of loss amounts, there would have
22 to be in excess of, I guess \$30,000.

23 MR. GSELL: It is a high number, Your Honor. The
24 argument simply is, I do not know how they arrived at those
25 numbers. And I'm not sure exactly how that number was

Laura Andersen, RMR 704-350-7493

1 totaled up.

2 Again, and that is simply because we do not have
3 access to those reports. We do not have the opportunity to
4 review it and make any challenges to specific line items
5 that we think may be inappropriate. But that is the basis
6 for that end of the objection.

7 The other basis for the objection is the number of
8 victims. In reading 2B1.1, Your Honor, victim is defined
9 as, "any person who sustained any part of the actual loss
10 determined under subsection (b)(1), or an individual who
11 sustained bodily injury". We don't have to worry about
12 bodily injury here.

13 But in reading the investigation reports, and the
14 Presentence Report, Your Honor, it would appear that the
15 actual individuals who had their identity obtained, and used
16 for the opening of credit accounts, and making purchases, it
17 would appear that each of those individuals have in fact
18 been compensated and made whole. Therefore they would not
19 have sustained any actual loss.

20 The Presentence Report, Your Honor, the paragraph
21 dealing with restitution, that's paragraph 94 on page 24,
22 lists five institutions, Citi Group, Wachovia, Target, G.E.
23 Money Bank and Macy's, as the victims who are entitled to
24 restitution.

25 The argument that I'm making on behalf of

Laura Andersen, RMR 704-350-7493

1 Mr. Mincey is, that in order to be determined to be a
2 victim, they have to have sustained an actual loss.

3 The individual people, again, who had their
4 identities taken, have not sustained an actual loss, because
5 they apparently have been compensated.

6 The institutions which are persons under the
7 Guidelines, total only five. And they're the ones who have
8 sustained the loss.

9 THE COURT: So in your theory, if my
10 identification is taken from me and used in an unauthorized
11 fashion, and it costs me days and months to reestablish my
12 credit, if I'm compensated for that, the use of my
13 identification, then I'm not considered a victim under the
14 Guidelines?

15 MR. GSELL: My argument is, is that under the
16 Guidelines, they have to have sustained an actual loss. If
17 you are in fact compensated, then you have not sustained an
18 actual loss.

19 THE COURT: Well, and then you make the
20 extrapolation from that, that if you have not sustained an
21 actual loss, even though you've been victimized, you're not
22 a victim.

23 MR. GSELL: Correct, Your Honor. I'm just simply
24 reading the definition from 2B1.1. And I think that's what
25 we need to be bound by. We do not have to go to a

Laura Andersen, RMR 704-350-7493

1 generalization as to what a victim is or --

2 THE COURT: Go ahead and show me where in 2B1.1
3 you find support for your argument.

4 MR. GSELL: It comes in, in the Application Notes,
5 Your Honor. Just before -- it's part of application note
6 one, definitions. And I believe it is at the very end of
7 the paragraph. Just before paragraph two, where victim is
8 defined.

9 THE COURT: "Any person who sustained any part of
10 the actual loss determined under subsection (b)(1)."

11 And so where in there does it say if you've been
12 reimbursed, that you're no longer considered a victim?

13 MR. GSELL: It doesn't say in there, Your Honor,
14 but sustained. You have sustained or suffered an actual
15 loss. That's what it says, actual loss.

16 And putting just a normal every day meaning to
17 actual, means is that it would still be there, and it has
18 not been compensated for.

19 And again, in this particular instance, based upon
20 the information in the Presentence Report, the persons who
21 have actually sustained a loss, are the five institutions
22 listed at paragraph 96.

23 THE COURT: But isn't it true in any type of
24 situation, if you have -- let's say you have damage to your
25 home and you have insurance. You've sustained a loss, so

Laura Andersen, RMR 704-350-7493

1 you make a claim for reimbursement; you get reimbursed.

2 Does that mean you never had a loss? I'm trying to --

3 MR. GSELL: You've sustained damage. You would
4 not have a loss, unless and until in that example, the
5 insurance company would have denied the claim, or only paid
6 partial claim.

7 And taking that one step further, Your Honor, if
8 you receive, if somebody throws a baseball through your
9 window and your insurance company pays for the window, you
10 do not have the right then to turn around and sue the
11 individual who threw the baseball through the window,
12 because there are no damages. You have in fact been
13 compensated.

14 THE COURT: All right. What says the government?

15 MR. GLEASON: Your Honor, first as to the loss
16 amount, the cutoff for the enhancement that's going to apply
17 for the defendant, kicks in at \$30,000 of loss amount. And
18 here, the amount of loss is over \$64,000 in this case as
19 calculated by the PSR.

20 So, Your Honor, it's hard to believe that if there
21 were any fees or late penalties, which the government
22 contends that there are not, that they would be of such
23 amount that would bring it below the \$30,000 threshold.

24 Your Honor, as far as the number of victims, Your
25 Honor, we have in this case, victims who are individual

Laura Andersen, RMR 704-350-7493

1 people, as well as corporations, all of which are victims in
2 that they have suffered a loss on account of the fraud
3 committed by this defendant.

4 And, Your Honor, those people who had their
5 identity stolen, and who had their credit ruined, or their
6 credit damaged by the defendant's actions, are victims.
7 They are people who are directly affected, and seriously
8 affected by his offenses.

9 Now, the fact that these victims may have received
10 compensation to ameliorate their financial loss, that does
11 not fix the damage done to their credit. That does not
12 address the lost time, the aggravation, the loss of peace of
13 mind created by having one's identity stolen. And, Your
14 Honor, that is a genuine loss.

15 In fact, the law now recognizes restitution for
16 18, U.S. Code, 1028(A) aggravated identity theft, and 18,
17 U.S. Code, 1028(A)(7) conventional identity theft, for the
18 amount of time lost in trying to repair one's credit.

19 That an individual person can in fact get
20 restitution for these identity offenses -- these identity
21 theft offenses -- for the amount of time that they have to
22 spend trying to fix their credit, waiting on the telephone,
23 waiting for an answer with credit bureaus, trying to get
24 things straightened.

25 So Congress has recognized that as a loss for

Laura Andersen, RMR 704-350-7493

1 which someone could receive restitution.

2 And in doing so, has recognized the genuine loss
3 involved in the loss of one's identity, and the loss of
4 one's time in trying to repair one's credit.

5 So, Your Honor, the government would contend that,
6 in fact, the individual people, as well as the corporations,
7 are indeed victims in this case. And that the number is
8 well above the threshold of ten victims, for the purposes of
9 the enhancements.

10 THE COURT: Mr. Gleason, I tend to agree with your
11 argument, conceptually, that actual loss means a reasonably
12 foreseeable pecuniary harm.

13 And pecuniary harm is defined as monetary, or
14 something that is readily measurable in money.

15 And certainly lost time, in terms of
16 establishing -- reestablishing credit, and those types of
17 efforts can be measurable in money. And so could,
18 conceptually, be an actual loss.

19 Where is the evidence in this case of more than
20 ten, with respect to victims who have actually sustained or
21 sustained actual loss? Assuming your argument is true,
22 conceptually, where's the evidence of it?

23 MR. GLEASON: Well, Your Honor, in the discovery
24 that was provided to defense counsel, just based upon the
25 losses that were ultimately paid for by Wachovia Bank,

Laura Andersen, RMR 704-350-7493

1 there's a listing of Wachovia Bank, plus more than ten
2 individual victims. And that was in the discovery in this
3 case.

4 PROBATION OFFICER: Your Honor, if I may approach?

5 THE COURT: You may.

6 (Probation officer and Court conferring.)

7 THE COURT: So, Mr. Gleason, your argument is that
8 if you provided something in discovery, that this court
9 would be able to rely upon it at sentencing, even though
10 it's not part of the Presentence Report, or anything else
11 that I know of in front of me. How can I find by a
12 preponderance that there are more than ten victims?

13 MR. GLEASON: Well, Your Honor, I can offer that
14 document into evidence. I have a witness who is present in
15 the courtroom, my case agent who can testify as to the
16 number of victims in this case, could authenticate the
17 document, and could identify it.

18 THE COURT: Well, it's up to you. I mean, you
19 have the burden to show by a preponderance. And I'm stuck
20 here with an issue where it appears to me that common sense
21 would indicate that there are more than ten victims here.
22 But from an evidentiary standpoint, I don't know that that's
23 been established.

24 MR. GLEASON: Well, Your Honor, we would then call
25 to the stand, our case agent, Mark Heath.

Laura Andersen, RMR 704-350-7493

1 THEREUPON, MARK HEATH, being first duly sworn, testified as
2 follows during DIRECT EXAMINATION BY MR. GLEASON:

3 Q. Okay. Sir, please state your full name for the court
4 record.

5 A. My name is Mark Heath.

6 Q. And for the record, what is your occupation?

7 A. I'm a U.S. postal inspector.

8 Q. And how long have you served as a United States postal
9 inspector?

10 A. For approximately seven or eight years.

11 Q. Agent Heath, have you been involved in the
12 investigation of defendant Anthony Mincey?

13 A. Yes.

14 Q. And during the course of the investigation, did you
15 develop evidence that the defendant committed identity theft
16 and aggravated identity theft in the Western District of
17 North Carolina?

18 A. Yes, sir.

19 Q. Could you please tell the Court what your investigation
20 revealed regarding that fraud?

21 A. The investigation revealed that Mr. Mincey and his
22 spouse, were conducting a scheme of account takeovers, as
23 well as fraud app -- credit cards -- fraudulent applications
24 of credit cards using stolen identities.

25 Q. Can you briefly describe what account takeovers means?

Laura Andersen, RMR 704-350-7493

1 A. An account takeover would be where the individual
2 claims to be the victim, contacts the financial institution
3 or a creditor, supplies -- supplies the personal
4 information, and then effectively changes the account
5 address.

6 In this case, has a duplicate check card mailed out to
7 an address that's you under their control. Therefore,
8 effectively taking over the victim account.

9 Q. And did your investigation reveal that the defendant
10 had engaged in that conduct?

11 A. Yes, sir.

12 Q. And did your investigation also reveal that the
13 defendant used other people's identities to create accounts?

14 A. Yes, sir.

15 Q. And did your investigation reveal that he in fact used
16 those new accounts to make purchases of items?

17 A. Yes, sir.

18 Q. And in the course of your investigation, were you able
19 to determine how many victims were victimized by the
20 defendant's fraudulent activities?

21 A. For my purposes, I believe I identified 17 or 18
22 individual victims, that also includes --

23 MR. GSELL: Objection as to what he believes, Your
24 Honor; he either knows or he doesn't.

25 THE COURT: I'll let you Cross on that.

Laura Andersen, RMR 704-350-7493

1 Overruled.

2 THE WITNESS: Again, approximately 17 or 18
3 victims. And that includes financial institutions as well.

4 Q. (Mr. Gleason) The number of victims would be in excess
5 of ten?

6 A. Yes, sir.

7 Q. And that included both corporations and individual
8 people?

9 A. Yes, sir.

10 MR. GLEASON: Your Honor, I have proposed
11 documents which I'm going to try to put on the ELMO. The
12 ELMO is up, and it looks like my screen is now up. Okay.

13 Does that -- Agent Heath, does that document
14 appear on your screen?

15 A. Yes, sir.

16 (Thereupon, Government Exhibit 1 was marked for
17 identification.)

18 MR. GLEASON: Okay. Counsel, do you have that on
19 your screen?

20 MR. GSELL: I'm no technological genius, but I'll
21 give it a whirl. But I do have the hard copies, Mr.
22 Gleason.

23 MR. GLEASON: Okay. All right. Very good.

24 Q. Agent Heath, I am now showing you what's been marked
25 for identification purposes as Government Exhibit Number 1,

Laura Andersen, RMR 704-350-7493

1 which is on your screen. Is that still on your screen, sir?

2 A. Just went out.

3 Q. Is it up now?

4 A. Yes, sir.

5 THE COURT: You can lift that screen up to see it
6 better.

7 THE WITNESS: Yes, sir.

8 Q. (Mr. Gleason) I'm showing you a document that's been
9 marked for identification as Government Exhibit Number 1.
10 It is a redacted document. Can you identify that document?

11 A. Yes, sir.

12 Q. And what is that, sir?

13 A. That is a individual loss listing as provided by
14 Wachovia.

15 Q. And that listing of losses, does that list individual
16 victims, as well as the loss amount incurred by Wachovia
17 Bank?

18 A. Yes, sir. It lists the individual victims and totals
19 the amount of the fraud loss, which is then effectively the
20 fraud loss reimbursed to those victims by the program.

21 Q. That was known of at that time?

22 A. Yes, sir.

23 Q. Now, other than the fact that the document has been
24 redacted, does that appear to be in the same or
25 substantially same condition as when you included that as

Laura Andersen, RMR 704-350-7493

1 part of your investigation?

2 A. Yes, sir.

3 MR. GLEASON: Your Honor, the government would
4 move Government's Exhibit Number 1 into evidence for
5 purposes of this hearing only.

6 THE COURT: Any objection?

7 MR. GSELL: No, Your Honor.

8 THE COURT: Let it be admitted.

9 (Thereupon, Government Exhibit 1 was received into
10 Evidence.)

11 (Thereupon, Government Exhibit 2 was marked for
12 identification.)

13 Q. (Mr. Gleason) Agent Heath, I'm now putting up
14 Government Exhibit Number 2, which has been marked for
15 identification purposes. Can you identify that document?

16 A. I --

17 Q. Is that document the same as Government Exhibit Number
18 1, with the names revealed?

19 A. I believe it is, yes, sir.

20 Q. Is that the same as Government Exhibit Number 1?

21 A. Yes.

22 Q. But for the fact that the names are not redacted?

23 A. Yes, it is.

24 Q. How many individual victims are listed in that
25 document?

Laura Andersen, RMR 704-350-7493

1 MR. GSELL: Well, object to the use of the word
2 victim, Your Honor.

3 Q. (Mr. Gleason) How many individuals are listed in the
4 document?

5 A. There are 16 individuals listed on that document.

6 Q. And did your investigation reveal that these are people
7 who had incurred a direct loss due to the fraud committed by
8 the defendant?

9 A. Yes, sir.

10 Q. And does that document contain a column showing the
11 amount of loss per individual?

12 A. Yes, sir.

13 Q. The tally itself, would that be the total amount of
14 loss?

15 A. Yes.

16 Q. Now, the people that are listed there, are you aware of
17 whether any of those people incurred damage to their credit?

18 A. Yes, sir. I mean, each of these individuals were
19 victims of identity theft and account takeover. So there
20 was some significant time spent by each individual, filing a
21 police report, contacting their financial institutions to
22 get that matter corrected.

23 Q. In an effort to correct their credit?

24 A. Yes.

25 MR. GLEASON: Your Honor, the Government would
Laura Andersen, RMR 704-350-7493

1 move to admit Government Number 2 into evidence.

2 THE COURT: Any objection?

3 MR. GSELL: No, Your Honor.

4 THE COURT: Let it be admitted.

5 (Thereupon, Government Exhibit 2 was received into
6 Evidence.)

7 Q. (Mr. Gleason) Agent Heath, the loss amounts that appear
8 in the Government's Exhibit 1 and 2, based upon your
9 investigation, would that be actual loss amounts?

10 A. That was a portion of the actual loss amount, yes.

11 Q. But for those individuals, would that represent the
12 actual loss amount?

13 A. Yes, sir.

14 Q. And each of those people listed in Government Exhibit
15 Number 1 and 2, were they directly affected by the
16 defendant's fraud?

17 MR. GSELL: I'm going to object, Your Honor, calls
18 for speculation.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, they were.

21 Q. (Mr. Gleason) Now, in addition to those individual
22 people, did your investigation reveal whether there were any
23 corporate victims?

24 A. Yes, there were.

25 Q. Did the investigation reveal that there were any

Laura Andersen, RMR 704-350-7493

1 corporations that were directly affected by the defendant's
2 fraud?

3 A. Yes, sir.

4 Q. And according to your investigation, how many
5 corporations were also directly affected by the defendant's
6 conduct?

7 A. In this investigation there is four financial
8 institutions that directly suffered a financial loss related
9 to this fraud.

10 Q. So the total number of individuals and/or corporations
11 that were directly affected by the defendant's fraud is more
12 than ten?

13 A. Yes, sir.

14 MR. GLEASON: Your Honor, no further questions
15 pertaining to this issue.

16 THE COURT: Any Cross?

17 MR. GSELL: Yes, Your Honor.

18 CROSS-EXAMINATION BY MR. GSELL:

19 Q. Do you have Exhibit 2 in front of you?

20 A. No, I don't.

21 Q. Can you put that up on mine?

22 Do you have it in front of you?

23 A. Yes, sir.

24 Q. Okay. There's an individual, last name "Alexander", at
25 the very top?

Laura Andersen, RMR 704-350-7493

- 1 A. Yes.
- 2 Q. Okay. And do you see the column entitled "amount"?
- 3 A. Yes.
- 4 Q. What number is in that?
- 5 A. Zero.
- 6 Q. And then there's a -- there's two Jarvis' on there.
- 7 Talking about the first one with the name beginning with the
- 8 letter "C". Do you see that about midway down?
- 9 A. Yes.
- 10 Q. Okay. And what's the dollar amount in the amount
- 11 column?
- 12 A. "Zero".
- 13 Q. And right underneath that is a "Johnson"?
- 14 A. Yes.
- 15 Q. What amount is in that amount column?
- 16 A. "Zero".
- 17 Q. Last name "Young". That's also a zero in the amount
- 18 column?
- 19 A. Yes, sir.
- 20 Q. Same thing for "Peppers"?
- 21 A. Yes, sir.
- 22 Q. Same thing for "Smith"?
- 23 A. Yes, sir.
- 24 Q. Same thing for "Anderson"?
- 25 A. Yes, sir.

Laura Andersen, RMR 704-350-7493

1 Q. And the total in the amount column is \$29,925.12,
2 correct?

3 A. In this Government Exhibit Number 2 is \$29,538.12.

4 Q. Going back to that exhibit, Agent, looking at those
5 individuals who have placed a dollar amount in that amount
6 column, and those individuals with a zero amount in the
7 amount column, there's only eight with an actual number
8 higher than zero, correct?

9 A. Yes.

10 Q. And then the amount that Wachovia -- well, let me ask
11 you this, do you understand that Wachovia is seeking
12 restitution for \$29,925.12?

13 A. Yes, sir.

14 Q. Okay. And that amount, 29,538.12, isn't that
15 encompassed in that amount that Wachovia is seeking
16 restitution?

17 A. Could you repeat the question?

18 Q. Sure. It looks like these individuals sustained, or
19 claimed some dollar loss, correct?

20 A. Yes.

21 Q. Is it your understanding that Wachovia has paid those
22 people?

23 A. Yes.

24 Q. Okay. And then Wachovia is turning around and claiming
25 that as a loss, correct?

Laura Andersen, RMR 704-350-7493

1 A. That's correct.

2 Q. Okay. So a number of people on this list suffered no
3 loss. And those that did suffer a loss had been
4 compensated, correct?

5 A. That is correct.

6 Q. Okay. And nowhere on here does it say how much they're
7 claiming for time spent repairing credit or anything like
8 that, correct?

9 A. No.

10 Q. Okay. So to the best of your knowledge, the people on
11 this list that had a dollar loss, had in fact been fully
12 compensated, correct?

13 A. Yes.

14 MR. GSELL: I have no further questions, Your
15 Honor.

16 THE COURT: Any Redirect?

17 MR. GLEASON: Yes.

18 REDIRECT EXAMINATION BY MR. GLEASON:

19 Q. Agent Heath, directing your attention to Government
20 Exhibit 2. The individuals listed in the first column, did
21 all those people have their identity stolen?

22 A. Yes.

23 Q. And did those people in that list, did they have either
24 their accounts taken over, or new accounts opened in their
25 identities?

Laura Andersen, RMR 704-350-7493

1 A. Both. They were both victims of fraud app credit
2 cards, or new accounts being opened, as well as the accounts
3 being taken over at Wachovia, and other financial
4 institutions.

5 Q. And the individuals that have a zero dollar amount
6 listed in the amount column, are those people who, in your
7 investigation revealed, incurred no financial loss?

8 A. There was financial loss related to these victims with
9 other financial institutions.

10 But again, the individual victim was reimbursed by
11 those financial institutions.

12 Q. But nonetheless, those individuals, even where there
13 was no financial loss, had a loss of their identity?

14 A. Yes.

15 Q. Did your investigation reveal that those people had to
16 spend time to correct their credit or straighten out their
17 identity?

18 A. Yes, sir.

19 MR. GLEASON: Your Honor, that would be Redirect,
20 going to the issue of the number of victims.

21 THE COURT: Very well. You may step down.

22 (Witness excused.)

23 THE COURT: The government have any other
24 evidence?

25 MR. GLEASON: Your Honor, pertaining to the number

Laura Andersen, RMR 704-350-7493

1 of victims, no, Your Honor. That would be our evidence that
2 there were in fact more than ten, either individuals or
3 corporations that were directly affected by the fraud of the
4 defendant.

5 THE COURT: And so tell me how you come to the
6 conclusion that there are ten or more victims under the
7 Guidelines?

8 MR. GLEASON: Well, Your Honor, each of these
9 individuals listed in Government Exhibit Number 2, were
10 directly and seriously affected by the offense conduct of
11 the defendant, and are identifiable as victims for the
12 purposes of the enhancement under the Guidelines.

13 Each of these people listed, there are more than
14 ten listed in Government Exhibit Number 2 -- putting aside
15 the corporations -- each of these individuals had their
16 identities stolen.

17 And these identities were stolen by the defendant.
18 And then, either their accounts were taken over and charges
19 were made on their existing accounts, or their identities
20 were used to open up new accounts where charges were made.

21 So, some of these people incurred a financial loss
22 from that activity, others did not.

23 But, ultimately, all of them are victims. Because
24 they all suffered a direct and very serious injury to their
25 identities. All of them had their identities stolen. They

Laura Andersen, RMR 704-350-7493

1 had their credit damaged.

2 THE COURT: How do you deal with the defense
3 argument that a victim is defined as someone who has
4 sustained any part of the actual loss determined under
5 Section (b)(1)?

6 MR. GLEASON: Well, Your Honor, actual loss, Your
7 Honor, I would contend that if someone had their identity
8 stolen, that's a loss. That's part of the actual loss in
9 this case, committed with fraud. And that these people have
10 to spend time to repair their credit, and repair their
11 identities to get their good names back.

12 In fact, Congress has recognized that with 1028(A)
13 aggravated identity theft and 1028(A)(7) that people are
14 entitled to get restitution for their lost time used to
15 correct their credit history, and get their good name and
16 identity back. So, Your Honor, that would be a genuine
17 loss, and they would in fact share in that loss.

18 THE COURT: Actual loss is defined under 2B1.1
19 App. Note 3, as "reasonably foreseeable pecuniary harm
20 resulting from the offense".

21 And there seems to be under the Guidelines, a
22 definitional component as to what "actual loss" means.

23 And so how would someone who is not -- doesn't --
24 was never harmed, from a financial standpoint, qualify as
25 someone who has suffered a reasonably foreseeable pecuniary

Laura Andersen, RMR 704-350-7493

1 harm?

2 MR. GLEASON: Your Honor, I think it is a
3 reasonably foreseeable pecuniary harm if someone has their
4 credit damaged. That person cannot obtain credit, cannot
5 get a loan. They are charged with bills that they did not
6 incur. They are sometimes denied employment.

7 THE COURT: Where is the evidence of that? I
8 think that's a -- I think -- I come back to conceptually
9 agreeing with you, but wondering where your evidence is of
10 the things that you are saying.

11 I mean, you've indicated that there could be a
12 pecuniary harm if someone had lost their credit, but where
13 is the evidence of that in this record?

14 MR. GLEASON: Well, it's foreseeable, Your Honor.
15 It's foreseeable pecuniary harm.

16 The witness testified that all the individuals
17 listed in Government Exhibit Number 2, had their identities
18 stolen. And their identities were used to either overtake
19 their existing accounts, or create new accounts.

20 And the witness testified that these people spent
21 time to correct their credit, correct their good name, and
22 had contacted the police, made reports, had taken steps to
23 try to correct their credit. That would be a foreseeable
24 pecuniary loss to those individuals.

25 THE COURT: Thank you.

Laura Andersen, RMR 704-350-7493

1 Mr. Gsell.

2 MR. GSELL: Your Honor, I think that -- my math
3 isn't that great. But I think if you totaled up the amount
4 of restitution under paragraph 94, that would equal the
5 amount of loss that's set forth in the offense conduct
6 section.

7 And there's no indication in any of the documents
8 that any of these amounts include anything for having to
9 repair credit or take time --

10 THE COURT: But restitution and loss are two
11 completely different concepts under the Guidelines.

12 MR. GSELL: Well, Your Honor, I understand that.
13 But I think we have to go by what's included in the report.
14 I mean, that is the purpose of the Presentence Report to put
15 everybody on notice. And they're saying that the amount of
16 the loss was \$64,314.69.

17 And again, it's been a little while, but I think
18 if you add up the amount claimed for restitution, it's going
19 to equal that loss amount. And there simply is no
20 indication in the report or anything that we've heard today,
21 that any of those amounts include anything for time spent
22 trying to repair credit.

23 I mean, I think if you look at the Government's
24 Exhibit -- Exhibit 2, I believe, though the dollar amounts
25 are the same, those are amounts that the people, I guess

Laura Andersen, RMR 704-350-7493

1 essentially were defrauded of, and that Wachovia then turned
2 around and reimbursed them for that amount.

3 I don't see any indication that Wachovia
4 reimbursed those people for time spent making phone calls or
5 anything like that. I don't necessarily know that that
6 would even be appropriate for Wachovia to reimburse those
7 people for that.

8 So I think we're bound by what's contained in the
9 Presentence Report --

10 THE COURT: Oh, I don't think we're bound by
11 what's contained in the Presentence Report. I think if
12 there's an evidentiary support, whether it comes in the
13 Presentence Report, or a witness called by the defense, or a
14 witness called by the prosecution, it's something -- that's
15 reliable, it's something the Court could consider at
16 sentencing.

17 MR. GSELL: Then I would simply say, Your Honor,
18 that there were no specifics. A bald statement that they
19 had their identity taken, therefore they must have suffered,
20 they must have spent time. That's a blanket conclusory
21 statement.

22 So again, my argument is that whoever these
23 individuals were that suffered identity fraud, they have in
24 fact been reimbursed. There's no separate claim for time
25 spent for phone calls or suffering from bad credit as a

Laura Andersen, RMR 704-350-7493

1 result of this incident.

2 I think what we're dealing with here is purely
3 economic. The people claimed the loss. They got
4 reimbursed. Therefore they are not a victim under the
5 Guidelines. Wachovia is a victim, along with the four other
6 institutions. And therefore, five is less than ten. And I
7 do not believe the government has met their burden, even by
8 a preponderance, that there are ten or more victims in this
9 case. As victim is defined in the fraud Guideline.

10 THE COURT: Thank you. It's a very interesting
11 argument that you make, Mr. Gsell. I think there are two
12 aspects of it. One is loss amount, and two is the number of
13 victims.

14 I think the government has met its burden by a
15 preponderance, established loss amount above 30,000.

16 The Court looks to the actual loss amount that is
17 captured in the information contained in the Presentence
18 Report, and in the exhibits today, to clearly show more than
19 30,000.

20 I also believe that the information contained in
21 the Presentence Report, shows that a search of the vehicle
22 indicated -- or the execution of a search warrant indicated
23 lists of 65 other individuals, and 18 separate
24 identification cards, which would also influence the court
25 in terms of intended loss.

Laura Andersen, RMR 704-350-7493

1 In other words, I think the defendants in this
2 case had committed an actual loss of more than \$30,000. And
3 intended to inflict additional losses, as a result of the
4 stolen identities that were found in the defendant's
5 possession. So I think the government has clearly met the
6 loss amount.

7 A much closer question with respect to the number
8 of victims. I have before me a First Circuit Case, *United*
9 *States V Stepanian*, which dealt with this issue, most
10 recently as 2009.

11 And in that case the question was, who constituted
12 a victim under 2B1.1. The defendant's argument was that
13 bank account holders who were reimbursed for their losses,
14 and were not victims for purposes of the multiple victim
15 enhancement, they had been reimbursed, which is essentially
16 large part of the defendant's argument.

17 And the government countered that the victim is
18 not defined by the -- who bears the final burden of the
19 financial loss. And it's enough that if an individual
20 sustained any part of the loss, before it shifted to another
21 individual or entities.

22 The First Circuit at least indicated that the
23 government had the better of the argument.

24 The most natural reading of the phrase, "sustained
25 any part of". In the Application Note, definition of victim

Laura Andersen, RMR 704-350-7493

1 does not have a temporal limit, otherwise indicate that
2 losses must be permanent.

3 There is a circuit split on this question. I'm
4 not sure how the Fourth Circuit would resolve the exact
5 question.

6 It appears to me, that one of the things that the
7 court can look at in determining actual loss, is the
8 reasonably foreseeable pecuniary harm.

9 And pecuniary harm is defined as monetary harm, or
10 something that can be readily measurable in money; deals
11 with economic harm, not non-economic harm, such as emotional
12 distress and other things.

13 It appears to me from the Presentence Report, that
14 there are at least seven individuals identified who took
15 some effort to try to report the theft of their identities,
16 either through the police or other institutions. There are
17 also five different institutional groups that the government
18 has proved by a preponderance, were considered victims.

19 And so I think the government -- and then the
20 government's evidence today indicated that there were 17 or
21 18 individuals or institutional victims in the case.

22 I think the government has met its burden by a
23 preponderance to establish ten or more victims. As I said,
24 it's a close case, but I think the government has met its
25 burden.

Laura Andersen, RMR 704-350-7493

1 And so I will overrule the defense objection based
2 upon the number of victims.

3 So for purposes of purely consulting the advisory
4 Guidelines, it appears to the Court, the correct offense
5 level is a 14, the criminal history category of a V, with
6 the resulting sentencing range on Count 3 of, 33 to 41
7 months.

8 And with respect to Counts Two and Four, as to
9 each count, there is a 24 month statutory term of
10 imprisonment.

11 Do the parties agree those -- having made the
12 rulings that I have, that those are the correct advisory
13 Guidelines to consult?

14 MR. GSELL: Those are the correct Guideline
15 calculations, Your Honor, based upon the Court's rulings
16 today.

17 THE COURT: Very well.

18 MR. GLEASON: Yes, Your Honor, that's correct.

19 THE COURT: All right. Then Mr. Gsell, I will be
20 glad to hear from you on behalf of Mr. Mincey at this time.

21 MR. GSELL: Thank you, Your Honor.

22 I would start out by directing the Court's
23 attention to paragraph 86, which indicates that the Plea
24 Agreement that was mutually agreed upon between Mr. Mincey
25 and the government, asked the court to run the two

Laura Andersen, RMR 704-350-7493

1 consecutive sentences concurrently with one another.

2 THE COURT: Two and Four?

3 MR. GSELL: Yes, Your Honor. And that was a
4 bargain that was struck between Mr. Mincey through myself
5 and the government. And we think that that is fair and just
6 under the circumstances, and certainly pursuant to the
7 negotiation.

8 I would let the court know that Mr. Mincey is 37
9 years old. He's lived between Georgia and North Carolina
10 most of his adult life. He does accept responsibility for
11 his conduct, Your Honor. He has never tried to shuck -- or
12 shirk his responsibility. When confronted by the agents, he
13 did provide them with information as to where he got the
14 documents from. Who was involved at his immediate level.
15 And I believe he provided some additional names as to where
16 some of those documents had been obtained from.

17 There was one debriefing session, Your Honor. I
18 believe that Mr. Mincey provided truthful information. It
19 may not have risen to the level of substantial assistance,
20 but he did make a good faith effort to cooperate with the
21 government. And I would ask the court to take that into
22 consideration.

23 Your Honor, the Presentence Report would indicate
24 that Mr. Mincey does have a history of substance abuse. And
25 we would ask the court to recommend to the Bureau of Prisons

Laura Andersen, RMR 704-350-7493

1 that Mr. Mincey be allowed to participate in whatever drug
2 treatment programs may be available to him. And hopefully
3 he can earn some credit on his sentence, as a result of his
4 participation in those programs.

5 While he has been in the Gaston County jail, Your
6 Honor, he has not had the benefit of being able to
7 participate in a drug treatment program.

8 However, to further himself and better himself, he
9 has enrolled and almost completed the GED program over
10 there. And that is despite the fact that the Presentence
11 Report indicates he is a high school graduate. He didn't
12 want to just be sitting around doing absolutely nothing.
13 And he thought that that would be a more constructive use of
14 his time. And that's what he's been doing since he's been
15 in the Gaston County jail.

16 Nonetheless, Your Honor, if the court could
17 recommend participation in any type of vocational or
18 educational programs, we think that that would be a good
19 thing for Mr. Mincey; not only while he's in the custody of
20 the Bureau of Prisons, but it would certainly facilitate his
21 rehabilitation. Once he is released and placed on
22 supervised release, it would certainly make his chances of
23 obtaining gainful and meaningful employment a lot better.

24 He has requested, if the Court would recommend
25 placing him in a facility as close to Charlotte as possible.

Laura Andersen, RMR 704-350-7493

1 This is where his family is. This is where I believe his
2 children are located. And he doesn't want it to be a
3 terrible burden on them to visit with them. And he does
4 want and hopes to be able to maintain the relationships that
5 he has fostered with them.

6 Again, Your Honor, he does accept responsibility.
7 There is no way that he would stand here and deny his
8 actions.

9 He would ask the Court simply to take all of that
10 into account, including the terms and conditions of the Plea
11 Agreement, and impose a sentence in accordance with that.

12 Mr. Mincey has informed me, Your Honor, that he
13 does wish to address the Court at the appropriate time.

14 THE COURT: Thank you, Mr. Gsell.

15 I'll be glad to hear from you, Mr. Mincey.

16 THE DEFENDANT: Your Honor, I would like to say
17 that I accept responsibility for my actions. No way am I
18 trying to elude any type of further sentencing, or
19 incarceration that may come to me. I realize what I did was
20 wrong. And I apologize for the time that the investigators
21 and the detectives had to spend to try to search out the
22 situation.

23 Like my attorney, Mr. Gsell has said, I've been in
24 the Gaston County jail, I enrolled in the GED, you know,
25 tried to refresh myself. And not just sit around and waste

Laura Andersen, RMR 704-350-7493

1 time being there.

2 And also I've been helping to talk to kids, the
3 troubled kids that's been coming through the jail. Where a
4 letter was obtained by the captain of the jail, verifying
5 that I had been doing that.

6 Part of my doing wrong, when I was out there, is
7 because I felt that I was supplying my kids with stuff that
8 I didn't have as a child myself. Which, that's not a
9 correct thing that I should have been doing, due to the fact
10 because the time that I was away from my kids, to me that's
11 more meaningful and more cherishable than any material thing
12 I could have ever given them in my life.

13 And if I had a chance to go back and recorrect any
14 of this that I have done, I wouldn't do it again. Because
15 my kids are suffering more than I am.

16 So, Your Honor, I ask that -- I understand that,
17 you know, I've got to go through something. But I ask that
18 the Court be lenient on my behalf so I can get back out to
19 my kids and my family, and take care of them productively,
20 and become a productive citizen.

21 Because I've sat back, you know, and I've come to
22 realize that there's people that get up and work every day
23 that have kids that they can't give a child everything they
24 want. It's what's the necessities in life is what's needed.

25 As I say, Your Honor, I'm 37 years old. I have

Laura Andersen, RMR 704-350-7493

1 two daughters because I don't consider step-daughter a step.
2 I consider that's my daughter. They -- both of them
3 graduating next year. And I would want nothing more than to
4 be able to share that experience with them. Because I know
5 what it really means to not have your father around, fully,
6 you know, the way that a child should have.

7 So in closing, Your Honor, I would like to again
8 express my deepest apology for this situation. And I accept
9 my responsibility fully.

10 THE COURT: Thank you.

11 Mr. Gleason.

12 MR. GLEASON: Thank you. Your Honor, United
13 States and the defense have agreed to recommend to the Court
14 that, Your Honor, the two counts of aggravated identity
15 theft, that they be run concurrently with one another. And
16 then by law be run consecutive to the Guideline range.

17 Your Honor, regarding the Guideline range offense,
18 the United States would ask for a sentence on the high end
19 of the advisory Guideline range, taking into consideration
20 the nature and circumstances of the offense under 18, U.S.
21 Code 3553(a).

22 Your Honor, this was a wide ranging fraud. Your
23 Honor, the defendant stole the identities of individuals,
24 used those identities to create new accounts, overtook
25 existing accounts, and directly harmed those individuals, as

Laura Andersen, RMR 704-350-7493

1 well as institutions, corporations, that bore financial loss
2 from this activity.

3 Your Honor, in one case the defendant engaged in
4 social engineering with a woman to elicit from her, her pin
5 numbers to her accounts, then befriended her, and had used
6 that opportunity to take advantage of her, and to obtain her
7 pin numbers, and then later to steal her identity.

8 Your Honor, he made purchases based upon these
9 identities. And, Your Honor, we think that that needs to be
10 considered in this case.

11 Also, Your Honor, the defendant's own personal
12 history and characteristics. The PSR has his criminal
13 history. And it's quite a long criminal history at that.
14 And we ask that the Court take that into consideration for
15 sentencing.

16 Also, Your Honor, to protect society from further
17 crimes of the defendant, as well as to promote respect for
18 the law, and also to underscore the seriousness of this
19 activity. Some people think that white collar crime doesn't
20 hurt people, but it really does hurt people.

21 There are a lot of people here who have had their
22 credit damaged, had to spend time to repair their credit,
23 had their good name taken by this defendant, who rather than
24 working, has taken the easy way out.

25 So, Your Honor, we ask that the Court consider

Laura Andersen, RMR 704-350-7493

1 these sentencing factors and sentence on the high end of the
2 advisory Guideline range, plus a consecutive two year
3 sentence pursuant to the Plea Agreement.

4 Additionally, Your Honor, we would like to note
5 that the victims were notified of this hearing. I believe
6 there is a representative of one of the corporate victims
7 present today in court. The other victims chose not to be
8 here.

9 Your Honor, also we're asking for restitution in
10 the amount reflected in the PSR, to the parties as listed in
11 the PSR.

12 And finally, Your Honor, at the appropriate time,
13 the United States would be moving to dismiss Count 1 of the
14 Bill of Indictment pursuant to the Plea Agreement.

15 THE COURT: Thank you.

16 Any victims in the case care to make any public
17 comment?

18 MR. GLEASON: No, Your Honor.

19 THE COURT: Very well.

20 I've listened to the arguments of counsel, the
21 allocution of the defendant. I've consulted the advisory
22 Guidelines, and have looked at the information contained in
23 the Presentence Report, as well as the testimony of Agent
24 Heath, prepared to state a sentence.

25 Pursuant to the Sentencing Reform Act of 1984, it

Laura Andersen, RMR 704-350-7493

1 is the judgment of the Court, that the defendant, Anthony
2 Dewayne Mincey, is hereby committed to the custody of the
3 Bureau of Prisons, to be imprisoned for a term of 36 months
4 on Count Three. And terms of 24 months each, on Counts Two
5 and Four.

6 The terms on Counts Two and Four to be served
7 concurrently with each other, but consecutive to the term
8 imposed on Count Three; for a total term of 60 months.

9 The sentence of 60 months is sufficient, but not
10 greater than necessary to accomplish the sentencing
11 objectives of Section 18, United States Code, Section
12 3553(a), including the need for the imposed sentence to
13 reflect the seriousness of the offense, promote respect for
14 the law, afford adequate deterrence, and very importantly in
15 this case, to protect the public from further crimes of the
16 defendant.

17 The identity theft crimes in this case were of an
18 extreme predatory nature, involved stealing individual
19 identities, creating bogus accounts, overtaking other
20 accounts, defrauding merchants, and was very extensive.

21 And it, when combined with the criminal history of
22 the defendant, which includes a lengthy history of financial
23 fraud, the fact that the defendant was on probation for
24 fraud from two different jurisdictions at the time he
25 committed the instant offense, it shows that there's a

Laura Andersen, RMR 704-350-7493

1 substantial need to protect the public from further crimes
2 of the defendant.

3 Spent a fair amount of time in this sentencing
4 hearing, trying to identify under the Guidelines, who the
5 victims were for purposes of consulting the advisory
6 Guidelines.

7 But whether the victims qualify as people who have
8 suffered actual loss as a result of pecuniary harm, the
9 number of victims who were victimized by this crime spree is
10 substantial.

11 And regardless of what decision I made under the
12 Guidelines, the 60 month sentence imposed today is intended
13 by the Court to be the sufficient but not greater than
14 necessary point to accomplish the sentencing objectives of
15 18, United States Code, Section 3553(a).

16 Although the sentence attempts to accomplish all
17 the purposes of Section 3553(a), it is motivated
18 substantially by the need to protect the public from further
19 crimes of this defendant.

20 The Court does call to the attention of the
21 custodial authorities that the defendant has a history of
22 substance abuse, and recommends that he be allowed to
23 participate in any available substance abuse treatment
24 program while incarcerated; and if eligible, receive the
25 benefits of 18, United States Code, Section 3621(e)(2).

Laura Andersen, RMR 704-350-7493

1 The Court further recommends that the defendant be
2 designated to a facility as close to Charlotte as possible,
3 consistent with the needs of the Federal Bureau of Prisons.

4 It is further ordered that the defendant be
5 required to support all dependents as outlined in the
6 Presentence Report from his prison earnings.

7 Upon release from imprisonment, the defendant
8 shall be placed on supervised release for a term of five
9 years.

10 This term consists of terms of five years on Count
11 Three. And terms of one year each on Counts Two and Three.
12 All such terms to run concurrently.

13 Within 72 hours of release from the custody of the
14 Bureau of Prisons, the defendant shall report in person to
15 the probation office in the district to which he is
16 released. And while on supervised release, the defendant
17 shall not commit another federal, state or local crime;
18 shall comply with the standard conditions that have been
19 adopted by the court in the Western District of North
20 Carolina.

21 It is further ordered that the defendant shall pay
22 to the United States, a special assessment of \$300.

23 It is further ordered, having determined the
24 amount of restitution owed to each victim, that the
25 defendant shall make restitution as directed to the

Laura Andersen, RMR 704-350-7493

1 following victims in the following amounts:

2 To Citi Group, 1,02372 -- \$1,023.72.

3 Wachovia, \$29,925.12.

4 Target \$1,161.14.

5 G.E. Money Bank, \$15,809.69.

6 Macy's \$16,395.02.

7 Any payment made that is not payment in full,
8 shall be divided proportionately among the victims named.

9 The defendant is jointly and severally liable with his
10 co-defendant for the total amount of restitution.

11 It is further ordered, and the Court finds that in
12 light of the restitution award, special assessment, the
13 defendant does not have the ability to pay a fine or
14 interest, will waive payment of a fine and interest in this
15 case.

16 Payment of the criminal monetary penalties shall
17 be due and payable immediately. The Court has considered
18 the financial and other information contained in the
19 Presentence Report and finds that the following is feasible.

20 If the defendant is unable to pay any monetary
21 penalty immediately, then during the period of imprisonment,
22 payment shall be made through the Federal Bureau of Prisons
23 Inmate Financial Responsibility Program.

24 And upon release from imprisonment, any remaining
25 balance shall be paid in monthly installments of no less

Laura Andersen, RMR 704-350-7493

1 than \$50, to commence within 60 days after release from
2 imprisonment until paid in full.

3 And throughout the period of supervision, the
4 probation officer shall monitor the defendant's economic
5 circumstances, and report to the Court with recommendations
6 as warranted, any material changes that affect his ability
7 to pay any court-ordered penalty.

8 Is there any legal reason why the sentence should
9 not be imposed as stated?

10 MR. GSELL: No, Your Honor.

11 MR. GLEASON: No, Your Honor.

12 THE COURT: Let it be imposed.

13 I will dismiss Count One upon motion of the
14 government.

15 Mr. Mincey, you can appeal your conviction, if you
16 believe that your guilty plea was somehow unlawful or
17 involuntary, or if there is some other defect in the
18 proceeding that was not waived by your guilty plea.

19 You also have a right to appeal your sentence,
20 under certain circumstances, particularly if you think the
21 sentence is contrary to law. Any notice of appeal must be
22 filed within ten days from the entry of judgment.

23 And if you are unable to pay the cost of an
24 appeal, you may apply for leave to appeal with no cost to
25 you.

Laura Andersen, RMR 704-350-7493

1 And if you request, the clerk of court will
2 prepare and file a Notice of Appeal on your behalf.

3 The Court recommends that you talk to your
4 attorney about these appeal rights, especially about the
5 impact on these rights of any waiver of appeal provision in
6 your Plea Agreement.

7 But do you understand these rights as I've just
8 read them to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Very well.

11 Anything further from either side?

12 MR. GLEASON: No, Your Honor.

13 MR. GSELL: No, Your Honor.

14 THE COURT: Then this matter is concluded.
15 Mr. Mincey is remanded to the custody of the marshals at
16 this time.

17 MR. GSELL: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (End of Proceedings.)

20 * * * * *

21 UNITED STATES DISTRICT COURT
22 WESTERN DISTRICT OF NORTH CAROLINA
23 CERTIFICATE OF REPORTER

24 I, Laura Andersen, Official Court Reporter,
25 certify that the foregoing transcript is a true and correct
26 transcript of the proceedings taken and transcribed by me.

 Dated this the 6th day of November, 2009.

 s/Laura Andersen
 Laura Andersen, RMR
 Official Court Reporter

 Laura Andersen, RMR 704-350-7493